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AN ACT
RELATING TO PUBLIC HEALTH; IMPOSING LICENSURE FEES AND
INTERMEDIATE SANCTIONS ON HEALTH FACILITIES; AMENDING
SECTIONS OF THE PUBLIC HEALTH ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 24-1-5 NMSA 1978 (being Laws 1973,
Chapter 359, Section 5, as amended) is amended to read:

"24-1-5. LICENSURE OF HEALTH FACILITIES--HEARINGS--
APPEALS.--

A. A health facility shall not be operated without
a license issued by the department. If a health facility is
found to be operating without a license, in order to protect
human health or safety, the secretary may issue a
cease-and-desist order. The health facility may request a
hearing that shall be held in the manner provided in this
section. The department may also proceed pursuant to the
Health Facility Receivership Act.

B. The department is authorized to make
inspections and investigations and to prescribe rules it
deems necessary or desirable to promote the health, safety
and welfare of persons using health facilities.

C. Except as provided in Subsection F of this
section, upon receipt of an application for a license to
operate a health facility, the department shall promptly

1 inspect the health facility to determine if it is in
2 compliance with all rules of the department. Applications
3 for hospital licenses shall include evidence that the bylaws
4 or rules of the hospital apply equally to osteopathic and
5 medical physicians. The department shall consolidate the
6 applications and inspections for a hospital that also
7 operates as a hospital-based primary care clinic.

8 D. Upon inspection of a health facility, if the
9 department finds a violation of its rules, the department may
10 deny the application for a license, whether initial or
11 renewal, or it may issue a temporary license. A temporary
12 license shall not be issued for a period exceeding one
13 hundred twenty days, nor shall more than two consecutive
14 temporary licenses be issued.

15 E. A one-year nontransferable license shall be
16 issued to any health facility complying with all rules of the
17 department. The license shall be renewable for successive
18 one-year periods, upon filing of a renewal application, if
19 the department is satisfied that the health facility is in
20 compliance with all rules of the department or, if not in
21 compliance with a rule, has been granted a waiver or variance
22 of that rule by the department pursuant to procedures,
23 conditions and guidelines adopted by rule of the department.
24 Licenses shall be posted in a conspicuous place on the
25 licensed premises, except that child care centers that

1 receive no state or federal funds may apply for and receive
2 from the department a waiver from the requirement that a
3 license be posted or kept on the licensed premises.

4 F. A health facility that has been inspected and
5 licensed by the department and that has received
6 certification for participation in federal reimbursement
7 programs and that has been fully accredited by the joint
8 commission on accreditation of health care organizations or
9 the American osteopathic association shall be granted a
10 license renewal based on that accreditation. Health
11 facilities receiving less than full accreditation by the
12 joint commission on the accreditation of health care
13 organizations or by the American osteopathic association may
14 be granted a license renewal based on that accreditation.
15 License renewals shall be issued upon application submitted
16 by the health facility upon forms prescribed by the
17 department. This subsection does not limit in any way the
18 department's various duties and responsibilities under other
19 provisions of the Public Health Act or under any other
20 subsection of this section, including any of the department's
21 responsibilities for the health and safety of the public.

22 G. The department may charge a reasonable fee not
23 to exceed twelve dollars (\$12.00) per bed for an inpatient
24 health facility or three hundred dollars (\$300) for any other
25 health facility for each license application, whether initial

1 or renewal, of an annual license or the second consecutive
2 issuance of a temporary license. Fees collected shall not be
3 refundable. All fees collected pursuant to licensure
4 applications shall be deposited with the state treasurer for
5 credit in a designated department recurring account for use
6 in health facility licensure and certification operations.

7 H. The department may revoke or suspend the
8 license of a health facility or may impose on a health
9 facility an intermediate sanction and a civil monetary
10 penalty provided in Section 24-1-5.2 NMSA 1978 after notice
11 and an opportunity for a hearing before a hearing officer
12 designated by the department to hear the matter and, except
13 for child care centers and facilities, may proceed pursuant
14 to the Health Facility Receivership Act upon a determination
15 that the health facility is not in compliance with any rule
16 of the department. If immediate action is required to
17 protect human health and safety, the secretary may suspend a
18 license or impose an intermediate sanction pending a hearing,
19 provided the hearing is held within five working days of the
20 suspension or imposition of the sanction, unless waived by
21 the licensee, and, except for child care centers and
22 facilities, may proceed ex parte pursuant to the Health
23 Facility Receivership Act.

24 I. The department shall schedule a hearing
25 pursuant to Subsection H of this section if the department

1 receives a request for a hearing from a licensee:

2 (1) within ten working days after receipt by
3 the licensee of notice of suspension, revocation, imposition
4 of an intermediate sanction or civil monetary penalty or
5 denial of an initial or renewal application;

6 (2) within four working days after receipt
7 by the licensee of an emergency suspension order or emergency
8 intermediate sanction imposition and notice of hearing if the
9 licensee wishes to waive the early hearing scheduled and
10 request a hearing at a later date; or

11 (3) within five working days after receipt
12 of a cease-and-desist order.

13 The department shall also provide timely notice to the
14 licensee of the date, time and place of the hearing, identity
15 of the hearing officer, subject matter of the hearing and
16 alleged violations.

17 J. A hearing held pursuant to provisions of this
18 section shall be conducted in accordance with adjudicatory
19 hearing rules and procedures adopted by rule of the
20 department. The licensee has the right to be represented by
21 counsel, to present all relevant evidence by means of
22 witnesses and books, papers, documents, records, files and
23 other evidence and to examine all opposing witnesses who
24 appear on any matter relevant to the issues. The hearing
25 officer has the power to administer oaths on request of any

1 party and issue subpoenas and subpoenas duces tecum prior to
2 or after the commencement of the hearing to compel discovery
3 and the attendance of witnesses and the production of
4 relevant books, papers, documents, records, files and other
5 evidence. Documents or records pertaining to abuse, neglect
6 or exploitation of a resident, client or patient of a health
7 facility or other documents, records or files in the custody
8 of the human services department or the office of the state
9 long-term care ombudsman at the aging and long-term services
10 department that are relevant to the alleged violations are
11 discoverable and admissible as evidence in any hearing.

12 K. Any party may appeal the final decision of the
13 department pursuant to the provisions of Section 39-3-1.1
14 NMSA 1978.

15 L. A complaint about a health facility received by
16 the department pursuant to this section shall be promptly
17 investigated and appropriate action shall be taken if
18 substantiated. The department shall develop a health
19 facilities protocol in conjunction with the human services
20 department, the protective services division of the children,
21 youth and families department, the office of the state
22 long-term care ombudsman and other appropriate agencies to
23 ensure the health, safety and rights of individuals in health
24 facilities. The health facilities protocol shall require:

25 (1) cross-reference among agencies pursuant

1 to this subsection of an allegation of abuse, neglect or
2 exploitation;

3 (2) an investigation, within the strict
4 priority time frames established by each protocol member's
5 rules, of an allegation or referral of abuse, neglect or
6 exploitation after the department has made a good cause
7 determination that abuse, neglect or exploitation occurred;

8 (3) an agency to share its investigative
9 information and findings with other agencies, unless
10 otherwise prohibited by law; and

11 (4) require the receiving agency to accept
12 the information provided pursuant to Paragraph (3) of this
13 subsection as potential evidence to initiate and conduct
14 investigations.

15 M. A complaint received by the department pursuant
16 to this section shall not be disclosed publicly in a manner
17 as to identify any individuals or health facilities if upon
18 investigation the complaint is unsubstantiated.

19 N. Notwithstanding any other provision of this
20 section, when there are reasonable grounds to believe that a
21 child is in imminent danger of abuse or neglect while in the
22 care of a child care facility, whether or not licensed, or
23 upon the receipt of a report pursuant to Section 32A-4-3 NMSA
24 1978, the department shall consult with the owner or operator
25 of the child care facility. Upon a finding of probable

1 cause, the department shall give the owner or operator notice
2 of its intent to suspend operation of the child care facility
3 and provide an opportunity for a hearing to be held within
4 three working days, unless waived by the owner or operator.
5 Within seven working days from the day of notice, the
6 secretary shall make a decision, and, if it is determined
7 that any child is in imminent danger of abuse or neglect in
8 the child care facility, the secretary may suspend operation
9 of the child care facility for a period not in excess of
10 fifteen days. Prior to the date of the hearing, the
11 department shall make a reasonable effort to notify the
12 parents of children in the child care facility of the notice
13 and opportunity for hearing given to the owner or operator.

14 O. Nothing contained in this section or in the
15 Public Health Act shall authorize either the secretary or the
16 department to make any inspection or investigation or to
17 prescribe any rules concerning group homes as defined in
18 Section 9-8-13 NMSA 1978 except as are reasonably necessary
19 or desirable to promote the health and safety of persons
20 using group homes."

21 Section 2. Section 24-1-5.2 NMSA 1978 (being Laws 1990,
22 Chapter 105, Section 2, as amended) is amended to read:

23 "24-1-5.2. HEALTH FACILITIES--INTERMEDIATE SANCTIONS--
24 CIVIL PENALTY.--

25 A. Upon a determination that a health facility is

1 not in compliance with any licensing requirement of the
2 department, the department, subject to the provisions of this
3 section and Section 24-1-5 NMSA 1978, may:

4 (1) impose any intermediate sanction
5 established by rule, including but not limited to:

- 6 (a) a directed plan of correction;
- 7 (b) facility monitors;
- 8 (c) denial of payment for new medicaid
9 admissions to the facility;
- 10 (d) temporary management or
11 receivership; and
- 12 (e) restricted admissions;

13 (2) assess a civil monetary penalty, with
14 interest, for each day the facility is or was out of
15 compliance. Civil monetary penalties shall not exceed a
16 total of five thousand dollars (\$5,000) per day. Penalties
17 and interest amounts assessed under this paragraph and
18 recovered on behalf of the state shall be remitted to the
19 department in a recurring account in the state treasury for
20 the sole purpose of funding the nonreimbursed cost of
21 facility monitors, temporary management and health facility
22 receiverships. The civil monetary penalties contained in
23 this paragraph are cumulative and may be imposed in addition
24 to any other fines or penalties provided by law; and

25 (3) with respect to health facilities other

1 than childcare centers or facilities, proceed pursuant to the
2 Health Facility Receivership Act.

3 B. The secretary shall adopt and promulgate rules
4 specifying the criteria for imposition of any intermediate
5 sanction and civil monetary penalty. The criteria shall
6 provide for more severe sanctions for a violation that
7 results in any abuse, neglect or exploitation of residents,
8 clients or patients as defined in the rules or that places
9 one or more residents, clients or patients of a health
10 facility at substantial risk of serious physical or mental
11 harm.

12 C. The provisions of this section for intermediate
13 sanctions and civil monetary penalties shall apply to
14 certified nursing facilities except when a federal agency has
15 imposed the same remedies, sanctions or penalties for the
16 same or similar violations.

17 D. Rules adopted by the department shall permit
18 sanctions pursuant to Paragraphs (1) and (2) of Subsection A
19 of this section for a specific violation in a certified
20 nursing facility if:

21 (1) the state statute or rule is not
22 duplicated by a federal certification rule; or

23 (2) the department determines intermediate
24 sanctions are necessary if sanctions permitted pursuant to
25 Paragraphs (1) and (2) of Subsection A of this section do not

1 duplicate a sanction imposed under the authority of 42 U.S.C.
2 1395 or 1396 for a particular deficiency.

3 E. A health facility is liable for the reasonable
4 costs of a directed plan of correction, facility monitors,
5 temporary management or receivership imposed pursuant to this
6 section and Section 24-1-5 NMSA 1978. The department may
7 take all necessary and appropriate legal action to recover
8 these costs from a health facility. All money recovered from
9 a health facility pursuant to this subsection shall be paid
10 into the general fund."

11 Section 3. EFFECTIVE DATE.--The effective date of the
12 provisions of this act is July 1, 2005. _____

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